



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-2147 FAX (603) 271-6588



**LETTER OF DEFICIENCY**

**WET 2004-13**

March 18, 2004

Todd Mann  
23 McKinley Ave  
Beverly, MA 01915

RE: DES Wetlands File #2001-02304 56 Fisher Rd, Wakefield

Dear Mr. Mann:

As you know, your property has been the subject of an enforcement action by DES for constructing a beach without a permit from DES. A brief chronology of events follows:

1. On November 21, 2001, personnel from the Department of Environmental Services ("DES") conducted an inspection of the above referenced property, more specifically referenced on Town of Wakefield Tax Map 56 as Lot 0001J (the "Property"). The purpose of the inspection was to determine compliance with RSA 482-A and NH Code of Admin. Rules Wt 100-700. During the inspection, DES personnel observed that a beach measuring approximately 400 square feet had been constructed on the shoreline without a permit from DES.
2. On January 4, 2002, DES issued a letter to the former owner, Mr. Fortin, requesting the following:
  - 1) As soon as possible and before the lake level rises, install a row of silt fencing down slope of the existing sand.
  - 2) Remove the sand from below the high water line and place out of the Wetlands Bureau's jurisdiction. If you stockpile the material onsite, use siltation control measures to ensure that it does not erode into the lake. If you use machinery to perform the restoration, please keep the machinery out of the lakebed.
  - 3) Submit an application for a perched beach. Enclosed is some literature explaining what the Bureau can permit. Prompt submittal of the application will ensure that you have the permit by next spring when you are ready to begin work. Please refer to file number 2001-2304 when you submit the application.
  - 4) Stabilize the exposed sand around the house and upslope from the high water mark by loaming and seeding. The exposed sand will continue to erode into the lake unless it is stabilized. As a temporary measure, install another row of silt fencing just below the house to prevent further erosion into the lake.
  - 5) Submit photographs to the Bureau by June 1, 2002, showing both rows of siltation fencing

in place and the restored lakebed with the sand removed.

3. On June 17, 2002, having received no application from Mr. Fortin, DES issued a letter to Mr. Fortin requesting a status update.
4. On February 20, 2003, DES issued a letter to Mr. Fortin stating that the property was still not in compliance, alerting Mr. Fortin that an inspection would be conducted in the spring.
5. On May 6, 2003, DES personnel conducted an inspection and found the following:
  - a. A timber barrier had been installed along the shoreline to retain the sand,
  - b. A retaining wall had been built along the northern edge of the beach / yard area, but the wall did not extend to the water.
6. On May 20, 2003, I spoke with you on the phone and was alerted that you were the owner of the property. I faxed you the correspondence that had been sent to Mr. Fortin, and requesting a response by July 7, 2003. No response was received to this letter.

Given the history of non-compliance at this property, DES would like to bring the matter to a resolution. The beach area remains unstabilized, and the pitch of the beach will require continued replenishment. The size of the beach is currently larger than DES can permit. In response, DES requests:

1. Within 30 days of receipt of this Letter of Deficiency, submit an application for a perched beach on the Property. Enclosed is some literature, previously sent to Mr. Fortin, that explains what DES can permit.
2. Within 30 days of receipt of this Letter of Deficiency, submit a restoration plan to DES for review and approval for the area outside the permissible beach area to be restored. Have the restoration plan prepared by a certified wetland scientist, and include provisions for restoring the unvegetated shoreline on the Property and removing sand that has migrated onto the lakebed. Submit the following with the restoration plan:
  - a. A plan with dimensions, drawn to scale, showing:
    1. Existing conditions, with wetland boundaries; and
    2. Proposed conditions after reestablishing the jurisdictional areas;
  - b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc) and stabilization of the restoration area;
  - c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration area and control of invasive species such as purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*);
  - d. A description of the proposed construction sequence and methods for accomplishing restoration and anticipated restoration compliance date.
  - e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum monitoring progress reports for two successive growing seasons following completion of the restoration project.
- 3) Retain a qualified wetland scientist to supervise the implementation of the restoration plan and to submit the restoration progress reports.
4. Implement the restoration plan only after receiving written approval and as conditioned by

DES.

RSA 482-A, the New Hampshire Wetlands law, was enacted to protect and preserve wetlands and surface waters from unregulated despoliation. Prior to dredging, filling, or construction in and adjacent to wetlands or surface waters, an individual is required to obtain a permit. If work is done without a permit, this is considered a violation of RSA 482-A. Failure to respond to this Letter of Deficiency in a timely and complete manner may be construed as noncompliance by the receiving party.

DES personnel may conduct another inspection at a later date to determine whether you have come into and are maintaining full compliance with the applicable statute and rules.

Issuance of this letter shall not preclude further enforcement by DES. Failure to comply with RSA 482-A will result in enforcement by DES, including but not limited to the issuance of fines, administrative orders, or referral to the New Hampshire Office of the Attorney General for prosecution of civil or criminal penalties. If an order is issued to you, it may also be recorded with the Registry of Deeds as an encumbrance against your property.

All documents submitted in response to this Letter of Deficiency should be addressed as follows:

Vicki Chase, Compliance Inspector  
Wetlands Bureau  
Department of Environmental Services  
29 Hazen Drive  
PO Box 95  
Concord, NH 03302-0095

Should you have any questions regarding this letter, or wish to arrange a meeting, please contact me at (603) 271-2147.

Sincerely,

**COPY**

Collis G. Adams, CWS  
Administrator  
Wetlands Bureau

CERTIFIED MAIL 7002 3150 0001 5411 0978

cc: Rene Pelletier, Manager, Land Resources Management Program  
Gretchen Rule, Administrator, DES Legal Unit  
Wakefield Conservation Commission  
Wakefield Board of Selectmen  
USACOE